

THE PALIMPSEST

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VOL. XX

ISSUED IN FEBRUARY 1939

NO. 2

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The First Territorial Assembly

When Iowa Territory was established in 1838, it was incumbered with a body of laws which had been adopted from Wisconsin, Michigan, and the eastern States. The problem of revising, coördinating, and adapting these statutes to conditions in the new Territory and enacting new legislation was the gigantic task which confronted the First Territorial Assembly of Iowa.

This Assembly was composed of thirty-nine members — twenty-six in the House of Representatives and thirteen in the Council. These members were, for the most part, young men. Almost one-third of them were less than thirty years of age. In the House of Representatives the youngest member was twenty-two, and the oldest was fifty-one. The median age was thirty-four, and only five members were more than forty years of age. In the Council, too, youth was "in the saddle". The youngest member there was twenty-five, and the median age was thirty-two.

Although one member of the Council had attained the age of sixty years, only three members were more than thirty-six.

The nativity of the members of the first Iowa legislature may be taken as an index of the sources of the population of the Territory at its inception. Virginia and Kentucky contributed the most — nine and eight respectively — more than two-fifths. Four each came from New York, Ohio, and Pennsylvania. The three States of Vermont, New Hampshire, and North Carolina contributed two apiece, while Connecticut, Illinois, Maryland, and Tennessee each contributed one. Thus twenty were from the South and nineteen from the North. None was born west of the Mississippi, nor in Indiana, Michigan, or Wisconsin.

In occupation, the members of the Assembly were predominantly farmers. Of the twenty-six Representatives, eighteen were tillers of the soil. In the Council there were four more farmers. For legal wisdom the Assembly had to depend upon only four lawyers. Representing other occupations and professions were six merchants, two physicians, two surveyors, a gunsmith, a miner, and a tailor.

Both the Council and the House were composed of typical frontiersmen. They had had little experience as lawmakers, but they were resource-

ful and knew what they wanted. Coming from many parts of the nation they brought a wide variety of customs and political attitudes. In their new environment they were committed to the task of weaving the various threads of previous experience into a useful fabric of legislation for Iowa. Some of the members of the first Assembly were men of great ability who there began distinguished public careers. James W. Grimes and Stephen Hempstead became Governors of Iowa; S. C. Hastings served as Chief Justice of the Supreme Court of both Iowa and California; and W. H. Wallace was later Governor and Delegate to Congress of both Washington and Idaho.

On the first day of the session, November 12, 1838, Governor Robert Lucas read his first message to the legislature. Lucas had previously served for four years as Governor of Ohio, and his experience there gave him confidence in directing the legislation of the new Territory. Many of his recommendations were ahead of the times.

"There is no subject to which I wish to call your attention more emphatically," he declared, "than the subject of establishing, at the commencement of our political existence, a well digested system of common schools." He was thinking of the time, not far in the future, when children would constitute a large part of the population.

In opposition to vice and crime, Governor Lucas maintained that gambling and intemperance might "be considered the fountain from which almost every other crime proceeds." In his opinion they had produced "more murders, robberies and individual distress, than all other crimes put together." To the legislators he said: "Could you in your wisdom devise ways and means to check the progress of gambling and intemperance in this Territory, you will perform an act which would immortalize your names and entitle you to the gratitude of posterity."

Perhaps the most important suggestion in the message was the codification of laws particularly adapted to the local situation. Realizing the magnitude of the task, he said, "experience has taught us, that it is impracticable to digest, report, and enact a complete code of laws during the session of a Legislative body". Accordingly, for the preparation of this code, he recommended the appointment of an interim committee of three persons, "of known legal experience and weight of character", to draft and submit proper laws for consideration and enactment at the next session of the legislature. "By pursuing this method," he said, "in the course of two years we will be released from the ambiguity of existing laws, and our system of jurisprudence will be established

upon a firm foundation". The youthful and ambitious legislators, however, had another plan, one that would not delay the work of codification until the next session of the legislature.

Two days after the legislature listened to the advice of the chief executive, James W. Grimes introduced a resolution in the House providing that the Judges of the Supreme Court submit to the Assembly such laws as they thought should be adopted. A week later a joint resolution similar to that proposed by Mr. Grimes passed both houses, requesting the Judges "to furnish this Legislative Assembly, during its present session, with such bills, as will, in their opinion, form a proper code of jurisprudence for Iowa, and regulate the practice of the courts thereof." That very day Judge Mason submitted a bill regulating court procedure in criminal cases.

The employment of the judges and their payment for legislative services was a matter of considerable debate during the session. When, on December 20th, the House passed a resolution to pay each of the judges three dollars a day for such time as they "may be" employed in this capacity, the Council amended the bill to make it apply only to such time as they had already served. Later the terms of payment were changed. Judge Wilson was paid for the service he had

rendered before December 28th, Judge Williams until December 25th, and Judge Mason was paid until January 11th.

The first session of the Iowa legislature was notorious for the conflicts between the Assembly and the other Territorial officers. First the famous "penknife quarrel" with Secretary Conway disturbed deliberations. Before that was settled the legislature and the Governor disagreed over their respective powers. According to the Organic Act all statutes had to be approved by the Governor. Though the session lasted only fifty-nine days, Governor Lucas vetoed eight bills, which so incensed the pioneer lawmakers that they declared he was "unfit to be the ruler of a free people".

Notwithstanding the strife and turmoil among officials, the First Territorial Assembly, aided by the Judges of the Supreme Court, rendered a highly valuable service in instituting, modernizing, classifying, and compiling the laws of the Territory. The book which contains the acts passed by this Assembly became known as the *Old Blue Book*, because it was originally bound in blue cardboard covers.

Although the first volume of Iowa session laws was, strictly speaking, not a code, for it contained much special and temporary legislation and the whole body of law was not completely system-

atized, nevertheless the *Old Blue Book* may properly be regarded as a forerunner of all later codifications and compilations of Iowa law. Not only did it serve for four years as the basic reference, but in 1843 it was adopted as the law of the Territory of Oregon.

The first document in the *Old Blue Book* was the Declaration of Independence. This was followed by the Constitution of the United States, the Ordinance of 1787, and the Organic Act of Iowa Territory. In the appendix were to be found the Congressional regulations concerning naturalization of aliens, and the Articles of Confederation.

The statutes enacted by the First Territorial Assembly, which constituted most of the volume, were grouped under seventy-four headings arranged alphabetically, commencing with Abatement, Amendments, Apprentices, Arbitrators, and Attachments, and ending with Waste, Water Crafts, Weights, Wills, and Worshiping Congregations. Between these extremes were laws dealing with banks, courts, education, ferries, Indians, mills, public lands, roads, steamboats, town plats, and many other subjects.

In some respects the work of the Assembly was primitive in character, yet on the whole progressive and forward looking. One act was designed

to prevent selling spirituous liquor to Indians, and another was enacted to prevent the practice of duelling. A calendar of crimes, drafted no doubt by the judges, contained definitions of most of the public offenses and prescribed penalties. The statute classified the subject in ten divisions, such as offenses against persons, habitations, property, public justice, peace, morality, and swindling. Some of the crimes have gone out of fashion — duelling, embracery, barratry, and rout — but that statute enacted a hundred years ago still constitutes the heart of the Iowa criminal code.

Local and temporary acts occupied much of the attention of the Assembly then as now. Licenses were granted for ferries and mill dams, roads were established, towns were chartered, boundaries were fixed, county seats were established, and an act was passed to locate the capital of the Territory at a place to be named Iowa City.

Typical of these early statutes was one dealing with apprentices. This measure provided that any person who, by his or her own free will and with the consent of parents or guardian, was bound by indenture to serve as an apprentice until the age of twenty-one, "shall be bounden to serve for the term in the indenture specified" as fully as if the apprentice were of full age. Provision was made for punishment in case the apprentice

failed to serve in accordance with the terms of indenture, and for legal action in case the master mistreated the apprentice. Either party could appeal to the district court, and if the apprentice were delinquent the court might extend the term of indenture as a method of punishment.

Perhaps it was this law or one similar to it that prompted Charles Swift of Dubuque to display notice of the disappearance of "a servant girl about eleven years of age". The girl had "short black hair and black eyes" and when last seen was wearing "a small figured blue calico dress". The public was cautioned against "harboring or trusting" such a person, under penalty of the law.

The immigration of negroes was carefully regulated. After April 1, 1839, no "black or mulatto person" was permitted to settle in Iowa without a certificate of freedom. Moreover, any such person had to give a bond of \$500 as surety against becoming a public charge. Failing to establish his status in this manner, the negro could be hired out by the county commissioners for six months "for the best price in cash that can be had." No one, except travelers and visitors, was allowed to keep slaves in the Territory, and any one who hired a negro who did not have a certificate of freedom or give bond of self maintenance was subject to a fine of as much as \$100. Courts

were required, upon presentation of satisfactory proof, to order the arrest and return of runaway slaves.

It may be noted that the public school system did not become thoroughly established in Iowa until the decade of the fifties. Schools prior to that time were private or semi-private. Yet an act of the First Territorial Assembly was designed to give public education to all white citizens between the ages of four and twenty-one years. The free public school "was a plant of slow growth", but the foundation was laid substantially by these early lawmakers.

The early Territorial statutes of Iowa, as a whole, reveal how well thirty-nine pioneers succeeded in devising a body of law to suit their purpose. Obviously they borrowed generously from the statutes in other States with which they were familiar. In some instances the acts derived from these sources were far in advance of actual needs.

Thus it may be noted that most of the statutes passed by the first legislature of Iowa "are not merely formal acts which had made their way into the records and been forgotten; they are real living laws, prepared with great care". The work of the First Legislative Assembly may still furnish a model for emulation.

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